

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

)
IN RE: ASHLEY MADISON CUSTOMER)
DATA SECURITY BREACH LITIGATION)
)
) MDL No. 2669
This Document Relates to:)
)
) Case No. 4:15-MD-02669-JAR
ALL CASES)
)

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' AND CLASS SETTLEMENT
COUNSEL'S MOTION FOR REIMBURSEMENT OF ADDITIONAL LITIGATION
EXPENSES INCURRED AFTER THE MOTION FOR FINAL APPROVAL WAS FILED**

Class Settlement Counsel negotiated a settlement that conferred a substantial benefit on the Plaintiff class in this difficult and novel class action. Class Settlement Counsel therefore seek reimbursement for their additional expenses that were incurred in this litigation but after Class Settlement Counsel and Plaintiffs submitted their Motion for (1) Approval of Attorneys' Fees, (2) Reimbursement of Litigation Expenses, and (3) Service Awards to the Class Representatives. Docs. 373 and 374 (the "Fee Motion"), which was granted on November 20, 2017. Doc. 383.

On February 2, 2018, Class Counsel filed its Submission of Court Ordered Accounting of Claims Paid and Amounts Distributed to Charities. Doc. 384. In that submission, Class Counsel stated that once all payments are made, expenses incurred are accounted for, and any unnegotiated distribution payments are known, Settlement Class Counsel will work with Angeion to issue a second and equal *pro rata cy pres* distribution to each of the Charities to close out the Settlement Fund. *Id.* Following that distribution, Settlement Class Counsel stated it would file a second notice of accounting with this Court to account for and document the distributions done with the Reserve. *Id.* Settlement Class Counsel stated that the notice would be filed with

this Court no later than 150 days from the date of that filing, which was to be on or around July 2, 2018.

In continuing to facilitate the completion of all tasks required to fulfill obligations related to the Settlement Agreement and Settlement Fund, Settlement Class Counsel has incurred additional expenses since the submission of its Fee Motion, and it requests reimbursement for those expenses out of the Settlement Fund prior to the second and final distribution of the remainder of the Settlement Fund. In a class action, the law is clear that it is appropriate for a court to reimburse plaintiffs' counsel for expenses incurred for the benefit of the class from a class settlement fund. *See In re Xcel Energy, Inc., Securities, Derivative & "ERISA" Litigation*, 364 F.Supp.2d 980, 999–1000 (D.Minn. 2005). Appropriate expenses include photocopying, postage, messenger services, document depository, telephone and facsimile charges, filing and witness fees, computer-assisted legal research, expert fees and consultants, and meal, hotel, and transportation charges for out-of-town travel. *See Id.* The Declaration of John J. Driscoll, submitted herewith, sets forth expenses billed and/or paid by counsel after the Fee Motion was submitted, totaling \$12,185.39. Exhibit 1, at ¶¶9-10. Each of these expenses were incurred for the benefit of the Class and fall within the categories outlined by the court in *In re Xcel Energy*, supra. *See Id.* at ¶16. More specifically, the expenses primarily pertain to travel expenses incurred and mediator fees billed and paid after the Fee Motion was submitted. As such, Settlement Class Counsel respectfully requests that these expenses be reimbursed from the class settlement fund prior to the final *cy pres* distribution.

Defendants do not oppose this Motion for Approval of Additional Expenses.

WHEREFORE Plaintiffs and Class Settlement Counsel respectfully request that the Court enter its Order awarding counsel an additional \$12,185.39 in costs and expenses from the Settlement Fund within 7 days of any Order granting the same.

Date: June 18, 2018

Respectfully Submitted,

THE DRISCOLL FIRM, P.C.

By:

/s/ John J. Driscoll
John J. Driscoll (54729MO)
Christopher J. Quinn (41883MO)
Gregory G. Pals (48820MO)
211 N. Broadway, 40th Floor
St. Louis, Missouri 63102
Tel.: (314) 932-3232
Fax: (314) 932-3233
john@thedriscollfirm.com
chris@thedriscollfirm.com
greg@thedriscollfirm.com

/s/ W. Lewis Garrison, Jr.

W. Lewis Garrison, Jr.
Christopher B. Hood
Taylor C. Bartlett
HENINGER GARRISON DAVIS, LLC
2224 1st Avenue North
Birmingham, Alabama 35203
Tel.: (205) 326-3336
Fax: (205) 326-3332
wlgarrison@hgdlawfirm.com
chood@hgdlawfirm.com
taylor@hgdlawfirm.com

James F. McDonough, III
HENINGER GARRISON DAVIS, LLC
3621 Vinings Slope, Suite 4320
Atlanta, Georgia 30339
Tel.: (404) 996-0869
Fax: (205) 326-3332
jmcdonough@hgdlawfirm.com

/s/ Douglas P. Dowd

Douglas P. Dowd (29240MO)

William T. Dowd (39648MO)
Alex R. Lumaghi (56569MO)
DOWD & DOWD, P.C.
211 North Broadway, Suite 4050
St. Louis, Missouri 63102
Tel.: (314) 621-2500
Fax: (314) 621-2503
doug@dowdlaw.net
bill@dowdlaw.net
alex@dowdlaw.net

Plaintiffs' Class Settlement Counsel

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2017, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all parties.

/s/ John J. Driscoll